

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

AMERICAN GNC CORPORATION,

§

Plaintiff,

§

v.

Case No. 4:17-cv-620-ALM-KPJ

**ZTE (USA) Inc. and
ZTE (TX) Inc.,**

PUBLIC REDACTED VERSION

Defendants.

Joint Motion To Stay All Deadlines

Plaintiff American GNC Corporation (“AGNC”) and Defendants ZTE (USA) Inc. and ZTE (TX) Inc. (collectively, “ZTE”) jointly move this Court to stay all deadlines in this case for 60 days, including without limitation the May 22 claim construction hearing, June 6 opening expert report deadline, and October 2018 jury selection date. The parties seek the stay to avoid waste of judicial resources in light of the extraordinary circumstances related to the Department of Commerce Bureau of Industry and Security (“BIS”) Order as to ZTE Corporation, which was issued on April 15, 2018 (“BIS Order”), attached as Exhibit A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In light of these circumstances, the parties request that the Court stay all deadlines in this case.¹

There are significant deadlines approaching in this case, including the claim construction hearing scheduled for May 22, 2018 and opening expert reports due on June 6. *See* Amended Scheduling Order at Dkt. No. 85 & Dkt. No. 116. Based on these approaching deadlines it is anticipated that the Court, the parties, and the technical advisor will be required to spend considerable resources regarding this case in the coming weeks, including preparing for and conducting the claim construction hearing and the substantial expense of preparing expert reports.

The parties agree that the stay order in this case should not preclude the Federal Circuit from issuing its order on ZTE (USA) Inc.'s mandamus petition regarding venue that it filed with the Federal Circuit on November 30, 2017. *See In re: ZTE (USA), Inc.*, Case No, 18-113. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In addition to the Federal Circuit's ruling in the mandamus proceeding, the parties agree that third-party discovery in this case should not be stayed. AGNC has sought discovery from ZTE's subcomponent suppliers through subpoenas since September 2017 but during these nine months these subcomponent suppliers have not cooperated. AGNC continues to seek third-party

¹ ZTE submits that the mandamus proceeding currently pending at the Federal Circuit on the issue of improper venue provides another, independent, basis for staying this case. Indeed, Chief Judge Gilstrap has recently stayed two unrelated cases pending the Federal Circuit's decision on venue in *In re: ZTE (USA), Inc.*, Case No, 18-113 (Fed. Cir.). *See Blitzsafe Texas LLC v. Mitsubishi Elec. Corp.*, Case No. 2:17-cv-00430-JRG at Dkt. # 133; *Corydoras Technologies LLC v. ZTE Corporation and ZTE (USA) Inc.*, Case No. 2:18-cv-00127-JRG at Dkt. # 13.

discovery and has already filed a motion to compel discovery from one of the third parties. AGNC anticipates that motions to compel may be required against at least two additional third parties in other jurisdictions. It is also possible that international discovery through the time-consuming Hague Convention procedures may be needed. Given the length of time that AGNC anticipates will be required to complete third party discovery, the parties submit that third party discovery should not be stayed.

Conclusion

In light of the foregoing extraordinary facts and circumstances, the parties request a temporary stay of the deadlines in this case for 60 days, except with respect to the Federal Circuit's order on the mandamus issue and third-party discovery. Either side may ask the Court to lift the stay for any reason.

May 11, 2018

Respectfully submitted,	Respectfully submitted,
<p><u>/s/ Alison Aubry Richards</u> David Berten IL Bar # 6200898 dberten@giplg.com Alison Aubry Richards IL Bar # 6285669 archards@giplg.com Alexander Debski IL Bar # 6305715 adebski@giplg.com Global IP Law Group, LLC 55 West Monroe Street Suite 3400 Chicago, IL 60603 T: (312) 241-1500 F: (312) 241-1522</p> <p><i>Attorneys for Plaintiff American GNC Corporation</i></p>	<p><u>/s/ Charles M. McMahon</u> Charles M. McMahon Brian A. Jones Casey Campbell McDERMOTT WILL & EMERY LLP 444 West Lake Street Chicago, Illinois 60606 (312) 372-2000</p> <p>Jay H. Reiziss Michael S. Nadel Natalie A. Bennett McDERMOTT WILL & EMERY LLP 500 North Capitol Street, N.W. Washington, D.C. 20001 (202) 758-8000</p>

	<p>Stephanie R. Barnes Tx State Bar No. 24045696 Elizabeth Forrest Tx State Bar No. 24086207 Siebman, Burg, Phillips & Smith, LLP 4949 Hedgcoxe Road, Suite 230 Plano, Texas 75024 Telephone: 214-387-9100 Fax: 214-387-9125 Email: stephaniebarnes@siebman.com elizabethforrest@siebman.com</p> <p><i>Attorneys for Defendants</i> ZTE (USA) Inc. and ZTE (TX) Inc.</p>
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**CERTIFICATE OF CONFERENCE AND
COMPLIANCE WITH LOCAL RULE CV-7(h)**

On May 11, 2018, counsel for AGNC, David Berten and Alison Richards, discussed the issues in this motion by phone, with counsel for ZTE, Charlie McMahon. In a follow-up email, Mr. McMahon confirmed that ZTE would join the above motion.

/s/ Alison Aubry Richards
Counsel for plaintiff AGNC

CERTIFICATE OF AUTHORITY TO FILE UNDER SEAL

This joint motion contains confidential information concerning the parties' settlement negotiations, their interpretation of the BIS Denial Order, and the impact of the BIS Denial Order on this case and the parties' ability to settle the case. Pursuant to the protective order entered in the case, the parties have filed this joint motion under seal.

/s/ Alison Aubry Richards
Counsel for plaintiff AGNC

CERTIFICATE OF SERVICE

The undersigned certifies that this document was served via electronic mail on May 11, 2018 to the following counsel for ZTE:

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/s/ Alison Aubry Richards

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